

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11971-GAO

JANET M. BUTLER,

Plaintiff,

VS.

MARK S. BEATON, Individually and in his capacity
as a Member of the BOARD OF SELECTMEN OF
THE TOWN OF KINGSTON,
PAUL M. GALLAGHER, OLAVO B. DEMACEDO,
JOSEPH D. KELLEHER, RICHARD E. KENNEY
in their capacities as Members of the
BOARD OF SELECTMEN OF THE TOWN OF KINGSTON
and TOWN OF KINGSTON,

Defendants.

JOINT MOTION FOR ENTRY OF JUDGMENT

All parties hereby move, pursuant to Fed. R. Civ. P. 58(a), for the entry of a separate final judgment in this case as to Counts I and III. As reasons therefore, the parties state the following:

1. With the consent of the parties, this case was referred to U.S.M.J. Dein for hearing and decision on Plaintiff's Motion for Partial Judgment on the Pleadings.
2. On October 29, 2004, after hearing, Magistrate-Judge Dein issued a formal recommendation to the District Judge (O'Toole, J.) that the plaintiff's motion be allowed, although not on all the grounds plaintiff asserted. Specifically, the Court (Dein, M.J.) found that the defendants "did not violate the plaintiff's constitutional right to procedural due process, but that their decision to remove the plaintiff from her position as an alternate member of the Kingston ZBA was arbitrary and capricious." Report and Recommendation at 24.

3. Therefore, the parties move for entry of separate and final judgment with respect to Count I of the Complaint, which alleges that the defendant Board of Selectmen's decision to remove plaintiff was arbitrary and capricious.

Complaint, ¶ 61.

4. The parties also move for entry of separate and final judgment with respect to Count III of the Complaint, which alleges violation of the plaintiff's constitutional rights by the defendants. The Court's Report noted that the plaintiff's allegations of bias "do not rise to the level of a due process violation," and that the defendants "did not violate the plaintiff's constitutional right to procedural due process." Report at 24.

5. The parties will bear their own costs and fees.

6. The parties attach a proposed Judgment, and will separately file a Stipulation of Dismissal as to all other Counts in the Complaint.

Respectfully submitted,

Plaintiff,
By her attorneys,

Defendants,
By their attorneys,

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Dated: November 17, 2004